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Lender Issues, Enforcements, and Points of Pain

– presented by –

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Lender Issues, Enforcements, and Points of Pain The New Rules

A LOT became effective in January 2014 !

- Ability To Repay / Qualified Mortgage
- Loan Originator Standards (and LO Comp)
- HOEPA
- Homeowner Counseling
- Appraisal Rules (In general, and for HPML's)
- Servicing Rules
- Escrow Accounts for Higher-Priced Loans

Lender Issues, Enforcements, and Points of Pain The Stuff Still On The Block

New Rules Yet To Come

- TILA / RESPA Integration
 - Final rule out, but not effective until October 3, 2015
 - **Significantly changes process and TIMING** (required delays between disclosures and consummation)
 - Establishes 2 new documents
 - Loan Estimate – combines Initial TIL and GFE
 - Closing Disclosure – combines Final TIL and HUD-1
- Credit Risk Retention
 - Final Rule in Federal Register 12/24/14; Effective for MBS 12/24/15, other securities 12/24/16
 - Requires securitizer to hold up to 5% of risk
 - Contains QRM – safe enough loans that won't require retained risk
 - **Defines QRM to be exactly QM (actually references the QM definition)!**
- HMDA Expansion
 - Significantly increase reported information
 - Not effective until CFPB issues final rule

Lender Issues, Enforcements, and Points of Pain Who Is The CFPB, and Why Do I Care?

Introduction to the CFPB

- Created by Title X of DFA; operational on July 21, 2011
- Broad Consumer Protection Mandate – Single Federal Agency To:
 - Receive, manage and respond to consumer financial complaints
 - Ensure protection against unfair, deceptive or abusive acts or practices
 - Prevent discrimination
 - Ensure markets are fair, transparent and competitive
- CFPB has total supervisory and enforcement authority over:
 - Depository institutions with assets over \$ 10 billion
 - Non-depository financial institutions
- CFPB has limited authority over smaller depositories, but can:
 - Require reports to support CFPB's responsibilities
 - **Include examiners on a "sample basis" to assess compliance**
 - **Recommend enforcement action when appropriate**

Lender Issues, Enforcements, and Points of Pain Who Is The CFPB, and Why Do I Care?

CFPB's Supervision & Enforcement Authority

- CFPB has complete rulemaking authority
 - Title X of DFA (Unfair, Deceptive and Abusive Acts and Practices)
 - Title XIV of DFA (Consumer protection, “anti-predatory-lending” stuff)
 - The “Enumerated Consumer Laws” :
 - TILA
 - RESPA
 - HOEPA
 - FCRA
 - AMTPA
 - EFTA
 - Consumer Leasing Act
 - Parts of FDIC Act
 - Interstate Land Sales
 - §626 of 2009 Omnibus Appropriations Act (UDAP)
 - TISA
 - ECOA
 - HMDA
 - FDCPA
 - HOPA (The Mtg. Ins. stuff)
 - S.A.F.E. ACT
 - Fair Credit Billing Act
 - Parts of GLBA

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CFPB's Available Remedies

- Rescission or Reformation of contracts
- Refund of moneys
- Return of property
- Restitution
- Disgorgement of profits
- Compensation for unjust enrichment
- Damages
- Public notification of violations (at violator's expense)
- Limits on activities and functions, including suspension or termination
- **Civil money penalties**
 - Up to \$5,000 per day for a simple violation
 - Up to \$25,000 per day for a “reckless” violation
 - Up to \$ 1 million per day for a “knowing” violation

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What ARE They Doing?

Loan Originator Compensation / Qualification

- Federal Reserve issues first rule (9/24/10, eff. 4/1/11*)
 - Prohibits:
 - LO Compensation varying based on loan terms, or proxies for loan terms
 - LO's receiving compensation from borrower AND any other interested source
 - LO adversely steering borrowers to obtain greater gain
- CFPB inherits authority over rule upon transfer (7/21/11)
- CFPB issues final rule implementing DFA (1/20/13, eff. 1/10/14*)
- CFPB sues Castle and Cook for violative bonuses (7/23/13)
 - \$ 9,228,896 in restitution; \$ 4,000,000 in civil money penalties
 - 3 years of detailed additional reporting to the Bureau
- CFPB penalizes Franklin Loan Corp for violative bonuses (11/13/14)
 - \$730,000 in restitution
 - 5 years of detailed additional reporting to the Bureau
- MMC fines New Day Financial for cheating on licensing (4/13/15)
 - Widespread history of people taking tests for others (sometimes paid for it)
 - Capturing questions to amass database of correct answers for future tests
 - \$5,280,000 in fines
- CFPB files against RPM Mortgage and it's CEO (6/4/15)
 - \$18,000,000 in restitution; \$2,000,000 in fines (\$ 1,000,000 from company and \$ 1,000,000 from CEO personally)

Lender Issues, Enforcements, and Points of Pain

What ARE They Doing?

Affiliates, Joint Ventures, MSA's, Etc.

- **Section 8 of RESPA prohibits (a)kickbacks and (b)fee splits**
 - No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.
 - No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.
- **Section 8(c) makes exceptions, including among others:**
 - **Payments to others for:**
 - Actual, necessary services that are distinctly different from other providers
 - Not duplicative and not nominal in nature
 - Paid only at reasonable value of actual services performed, not value of referral
 - **Affiliated Business Arrangements, if conditions are properly met**
- **Penalties for violation of Section 8 include:**
 - Any person or persons who violate the provisions of this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.
 - Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

Lender Issues, Enforcements, and Points of Pain

What ARE They Doing?

Affiliates, Joint Ventures, MSA's, Etc. (Cont.)

- CFPB fines 4 MI's >\$ 15 million for captive reinsurance (4/4/13)
- CFPB fines Texas homebuilder in sham JV (5/17/13)
 - Orders TOTAL disgorgement of all monies EARNED by JV
 - BANS builder from ANY FUTURE INVOLVEMENT in financial services
- CFPB fines First Alliance Lending for fee splits (2/24/14)
 - \$83,000 in penalties
 - Violation was self-reported by First Alliance
- CFPB fines RealtySouth \$500,000 for bad AfBA disclosure (5/28/14)
- CFPB fines Stonebridge Title Svcs \$30,000 for kickbacks (6/12/14)
- HUD OIG issues critical report on Cornerstone Lending (9/14/14)
- CFPB enters Consent Order against Lighthouse Title (9/24/14)
 - \$200,000 in civil money penalties
 - Declares that merely entering into a contract is a "Thing of Value"

Lender Issues, Enforcements, and Points of Pain

What ARE They Doing?

Affiliates, Joint Ventures, MSA's, Etc. (Cont.)

- CFPB and MD AG sue over Genuine Title kickback scheme (1/22/15)
 - Wells to pay **\$24MM** in penalty and **\$10MM** in redress to consumers
 - Chase to pay **\$600K** in penalty and **\$300K** in redress to consumers
 - Mr. and Mrs. COHEN to pay **\$30K** penalty, and **2-year** ban from industry
- CFPB and MD AG sue 6 more **individuals** in Genuine Title (4/29/15)
 - Jay Zukerberg, Founder and owner of Genuine Title
 - **\$130,000** in fines
 - **5-year** ban
 - Brandon Glickstein, Marketing Director of Genuine Title
 - **\$400,000** in fines
 - **5-year** ban
 - Mandelberg, Peterson, Pobletts (Loan Officers)
 - Total of **\$132,500** in fines
 - **2-year** ban
 - Kopp (Loan Officer)
 - *Still negotiating*

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What ARE They Doing?

Mortgage Advertising

- FTC issues Mortgage Advertising Practices (MAP) Rule (7/22/11)
- CFPB codifies MAP Rule into its own Regulation N (12/16/11)
- Forbids “material misrepresentation, express or implicit”
 - Sets forth a non-exhaustive list of *per se* deceptive practices
- Has strict recordkeeping requirements (2 years) on most everything
- CFPB issues warning letters to mortgage lenders (11/19/12)
- FTC also issues warning letters to 20 realtors, home builders, etc.
 - Tells recipients that they saw violations in materials, so *review and fix*
 - *Intended to be a shot across the bow to everyone else !!*

Lender Issues, Enforcements, and Points of Pain

What ARE They Doing?

Mortgage Advertising (Cont.)

- FTC fines Heritage Homes **\$650,000** for deceptive ads (6/6/14)
 - Misrepresented loan terms
 - Intentionally low-balled interest rates / payments
- CFPB fines Amerisave, for bait-and-switch ads (8/12/14)
 - Amerisave and Novo Appraisal pay refunds of **\$14.8MM** and fines of **\$4.5MM**
 - Patrick Markert (**owner** of both) pays fine of **\$1.5MM personally**
- CFPB fines NewDay Financial **\$2MM** for deceptive ads (2/10/15)
 - Established relationship with veterans' organization for endorsement
 - Used organization logos and misleading language to imply organization itself
 - Paid **kickbacks** to organization on originations (so RESPA violation as well)
- CFPB fines 3 lenders for “pretending” to be government (2/12/15)
 - CFPB fines Flagship Financial **\$225,000**
 - CFPB fines American Preferred Lending **\$85,000**
 - CFPB sues All Financial Services; outcome still pending
- CFPB fines RMK Financial Corp. **\$250,000** for bad ads (4/9/15)
 - “Pretending” to be government
 - Misleading or incorrect information about rates and terms
 - Often targeted service-members or holders of VA loans

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What ARE They Doing?

Mortgage Advertising (Cont.)

- CFPB sues two companies and owner over misleading ads (5/11/15)
 - Nationwide Biweekly Administration, Inc.
 - Loan Payment Administration LLC
 - Daniel Lipsky, owner
- CFPB alleges four primary deceptions
 - Falsely promising consumers they could save money without paying more
 - Falsely promising immediate savings that take years to achieve
 - Misleading consumers about the costs of the program
 - Falsely claiming to be affiliated with mortgage lenders or servicers
- Company disputes the allegations
 - Claims they have a 97.3 Customer Satisfaction Rate
 - Claims 100 *oldest active* customers saved \$3.5MM with only \$128,000 in fees
 - Says will defend itself and file detailed response soon

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What ARE They Doing?

Fair Lending

- CFPB adopts HUD intent to use Disparate Impact
 - VERY contentious subject
 - Supreme Court ruled that it IS valid in Real Estate transactions, with limitations and requirements
- Most common shortcomings in CFPB exam findings:
 - Missing or outdated policies
 - Lack of training
 - Lack of monitoring
 - Lack of Management involvement and oversight
- Most common claims in complaints
 - Pricing disparities (outpacing approval disparities)
 - Underwriting
 - Redlining
 - Steering / Reverse Redlining

Lender Issues, Enforcements, and Points of Pain What ARE They Doing?

Fair Lending (Cont.)

- Recent Settlement Agreements
 - Plaza Home Mortgage - **\$3MM**
 - Capital One / Chevy Chase - **\$2.8MM**
 - Southport Bank, Kenosha, WI - **\$687,000** (\$251MM bank)
 - Brotman Enterprise LLC - **\$25,000** (Real Estate Company)
 - Freedom Mortgage - **\$104,000** for documenting disability continuance
 - Wells Fargo - **\$5MM** over pregnant/maternity leave discrimination
 - Provident Funding Associates - **\$9MM** over broker pricing discretion
 - Associated Bank, Green Bay, WI - **\$200MM** for disparate-impact redlining

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What ARE They Doing?

Third-Party Vendor Oversight

- CFPB's first official enforcement action – July 18, 2012
- Largely in the credit card space, but not limited to it
- CFPB Bulletin - expected monitoring and oversight (4/13/12)
 - Supervised entity fully responsible for everything third-party does
 - Must establish strict requirements for third-party's performance
 - Must have extensive process to assess, monitor and enforce
- CFPB fines Capital One, Discover and American Express
 - Capital One - **\$140MM** in refunds; **\$25MM** penalty (7/18/12)
 - Discover Bank - **\$200MM** in refunds; **\$14MM** penalty (9/24/12)
 - Am Ex - **\$85MM** in refunds; **\$27.5MM** total penalties (10/1/12)
- OCC Bulletin 2013-29 ups the ante
 - Rescinds earlier OCC guidance
 - “Partners” with CFPB Bulletin 2012-13
- Joint CFPB / OCC enforcement against USBank (9/25/14)
 - Concerns billing for identity protection services never received
 - Harmed customers receive **\$48MM** in relief
 - CFPB imposes fines of **\$5MM** and OCC imposes fines of **\$4MM**

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What ARE They Doing?

Data Integrity, particularly HMDA

- One of two core elements in CFPB exams (along with CMS)
- Critical for CFPB to achieve its goal of being “Data Driven”
- Most common inaccuracies in CFPB exam findings:
 - Required information simply missing or formatted incorrectly
 - Inaccurate dates
 - Inaccurate actions, particularly “Withdraws” that should be “Denials”
 - Incorrect loan amounts
- CFPB issues and reactions
 - CFPB says inaccurate data = inadequate management and controls
 - Causes CFPB pre-work to be wasted, not generating “good vibrations”
 - Sufficient error rates have resulted in 3-year scrub and re-file orders
- Putting **YOUR** money where their mouth is!
 - Mortgage Master, Inc. – **\$425,000** civil penalty (**21,015** LAR records total)
 - Washington Federal – **\$34,000** civil penalty (**5,785** LAR records total)

Questions ?

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